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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MARY E. BARBOUR, AS TRUSTEE OF  
THE MARY E. BARBOUR FAMILY  
TRUST ONE, Derivatively On Behalf of  
BROCADE COMMUNICATIONS  
SYSTEMS, INC.,

Plaintiff,

v.

GREGORY L. REYES *et al.*,

Defendants.

- and-

BROCADE COMMUNICATIONS  
SYSTEMS, INC., a Delaware corporation,

Nominal Defendant.

Case No. C 08-02029 CRB

**DECLARATION OF TOM MACMITCHELL  
IN RESPONSE TO ADMINISTRATIVE  
MOTION AND REQUEST FOR SEALING A  
PORTION OF AMENDED COMPLAINT**

1 I, Tom MacMitchell, the undersigned, declare:

2 1. I am the Director of Legal Affairs and Assistant Secretary for Nominal Defendant  
 3 Brocade Communications Systems, Inc. ("Brocade").

4 2. I have knowledge of the following, and if called as a witness, could and would  
 5 testify competently to the contents of this declaration.

6 3. I am informed by counsel for Brocade that, on July 21, 2008, plaintiff Mary E.  
 7 Barbour ("Plaintiff") filed an Amended Complaint and an Administrative Motion to Lodge a  
 8 Portion of Amended Complaint Under Seal pursuant to Civil Local Rule 7-11 and Civil Local  
 9 Rule 79-5. Plaintiff lodged both unredacted and redacted versions of the Amended Complaint  
 10 with the Clerk of the Court pursuant to Local Rule 79-5(d), and requested that to the extent that  
 11 no declarations showing good cause to keep the redacted portions under seal were timely  
 12 submitted, that the unredacted version of the Amended Complaint be deemed as the operative  
 13 complaint on file with the Court.

14 4. This Declaration is being filed pursuant to Civil Local Rule 79-5(d) in response to  
 15 Plaintiff's Administrative Motion, and is made to the best of my knowledge. As discussed  
 16 specifically below, it is Brocade's position that some of the redacted portions of the Amended  
 17 Complaint contain confidential information that is entitled to protection from public disclosure.  
 18 Accordingly, Brocade believes that good cause exists to seal certain of the redacted portions of  
 19 the Amended Complaint as follows:

20 (a) Portions of paragraphs 143, 146, 149, 150, 152, 158, 164, and 165 refer to  
 21 private compensation information of certain former Brocade employees, none of whom is named  
 22 as a defendant in this action. It is Brocade's position that such information is protected from  
 23 disclosure pursuant to California Constitution, Article I, Section 1, California Evidence Code  
 24 Section 1060 and Federal Rule of Evidence 501. Accordingly, Brocade maintains that those  
 25 portions of these paragraphs identifying information about compensation of former Brocade  
 26 employees – specifically, the number of shares of Brocade stock offered or granted to them –  
 27 should be maintained under seal pursuant to Civil Local Rule 79-5(b) and (d).

28 (b) A portion of paragraph 213 refers to a preliminary negotiated price term of

1 a confidential business transaction that was contemplated by Brocade and Cisco Systems, Inc.  
 2 ("Cisco"), which term has not previously been publicly disclosed. It is Brocade's position that the  
 3 preliminary negotiated price term of the contemplated business transaction is private, business  
 4 confidential, proprietary, or otherwise protected from disclosure pursuant to Federal Rule of Civil  
 5 Procedure 26(c)(1)(g), Federal Rule of Evidence 501, California Constitution, Article I, Section 1,  
 6 or California Evidence Code § 1060. Accordingly, Brocade believes that the portion of paragraph  
 7 213 that refers to the preliminary negotiated price term should be maintained under seal pursuant  
 8 to Civil Local Rule 79-5(b) and (d).

9 (c) It is Brocade's position that paragraph 279 contains personal and private  
 10 information regarding former employees of Brocade, including an individual who is not a party to  
 11 this action and would be identifiable by the reference to that individual's job title, which  
 12 information has not previously been publicly disclosed. Brocade maintains that this information  
 13 is protected from disclosure pursuant to California Constitution, Article I, Section 1, California  
 14 Evidence Code Section 1060 and Federal Rule of Evidence 501. Brocade also believes that it has  
 15 a contractual obligation with one individual former employee to not disclose this information.  
 16 Accordingly, Brocade requests that the second sentence of paragraph 279 be maintained under  
 17 seal pursuant to Civil Local Rule 79-5(b) and (d).

18 5. While Brocade does not object to the unsealing of any other redacted portions of  
 19 the Amended Complaint, Brocade does not withdraw the designation of confidentiality for any of  
 20 the underlying documents produced and designated as confidential by Brocade or other  
 21 defendants to this litigation that are referred to or relied upon in the Amended Complaint.

22 6. In accordance with Local Rule 79-5(d), a narrowly tailored proposed order sealing  
 23 the personal, private and confidential information in paragraphs 143, 146, 149, 150, 152, 158,  
 24 164, 165, 213, and 279 of the Amended Complaint will be filed with the Court along with this  
 25 Declaration.

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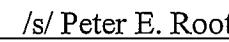
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1 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
2 August 7, 2008, at San Jose, California.

3   
4 Tom MacMitchell  
5 Director of Legal Affairs and Assistant Secretary  
6 Brocade Communications Systems, Inc.

7 **ATTESTATION PURSUANT TO GENERAL ORDER NO. 45**

8 I, Peter E. Root, attest that concurrence in the filing of this document has been obtained  
9 from the above signatory, Tom MacMitchell. I declare under penalty of perjury that the  
10 foregoing is true and correct. Executed on this 7<sup>th</sup> day of August, 2008, at East Palo Alto,  
11 California.

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Peter E. Root

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